

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JERRY DUNSON, et al.,
Plaintiffs,

v.

CORDIS CORPORATION, et al.,
Defendants.

Case No. [16-cv-03076-SI](#)

**ORDER TO SHOW CAUSE RE: CAFA
JURISDICTION**

Defendant Cordis Corporation (“Cordis”), which is headquartered in California, removed this action to federal court on June 6, 2016 and promptly filed a motion to dismiss plaintiffs’ first amended complaint (“FAC”), which the Court granted in part. *See* Dkt. No. 1 (Notice of Removal); Dkt. No. 7 (Motion); Dkt. No. 19 (Amended Motion); Dkt. No. 20 (Order). Defendants are now ordered to show cause regarding why this case should not be dismissed for lack of jurisdiction.

Federal Rule of Civil Procedure 12(h)(3) provides that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” *See also Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884) (concluding that challenge to a federal court’s subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*).

Defendants allege in their notice of removal that the Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), or CAFA. Dkt. No. 1 ¶ 18. “CAFA provides the federal district courts with original jurisdiction to hear a class action if the class has more than 100 members[.]” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, (2013) (internal quotation marks omitted) (citing 28 U.S.C. § 1332(d)(5)(B)). By the Court’s count there are currently 8 plaintiffs in the present case. *See* Dkt. No. 1-1 (FAC).

It appears by defendant’s notice of removal that they seek to include, for the sake of

achieving the “100 member” numerosity requirement, *all* the plaintiffs in 9 separate cases currently pending before 9 different judges in this district:

Dunson, et al. v. Cordis Corp., et al., 3:16-cv-03076-SI (Illston, J.) (8 plaintiffs)

Quinn, et al. v. Cordis Corp., et al., 3:16-cv-03080-WHO (Orrick, J.) (12 plaintiffs)

Resovsky v. Cordis Corp., et al., 3:16-cv-03082-EMC (Chen, J.) (7 plaintiffs)

Grant, et al. v. Cordis Corp., et al., 3:16-cv-03083-HSG (Gilliam, J.) (20 plaintiffs)

Herbert, et al. v. Cordis Corp., et al., 3:16-cv-03085-JST (Tigar, J.) (12 plaintiffs)

Holden, et al. v. Cordis Corp., et al., 3:16-cv-03087-TEH (Henderson, J.) (21 plaintiffs)

Oehring, et al. v. Cordis Corp., et al., 4:16-cv-03088-JSW (White, J.) (34 plaintiffs)

Barber, et al. v. Cordis Corp., et al., 3:16-cv-03086-JD (Donato, J.) (27 plaintiffs)

Sutton, et al. v. Cordis Corp., et al., 3:16-cv-04012-VC (Chhabria, J.) (3 plaintiffs)

Dkt. No. 1 ¶¶ 1-11.

A motion to remand is pending in several of these cases. *See* Dkt. No. 16, 3:16-cv-03080-WHO (Orrick, J.); Dkt. No. 15, 3:16-cv-03083-HSG (Gilliam, J.); Dkt. No. 14, 3:16-cv-03085-JST (Tigar, J.); Dkt. No. 20, 4:16-cv-03088-JSW (White, J.); Dkt. No. 17, 3:16-cv-03086-JD (Donato, J.). Judge Chen recently issued an order to show cause re: jurisdiction in case number 16-cv-03082, questioning defendant’s removal on the basis of CAFA jurisdiction given the 7 plaintiffs in that case. *See* Dkt. No. 22, 3:16-cv-03082-EMC.

None of the above cases are consolidated. Should any of the pending remand motions be granted some of the cases will be in state court while others remain in federal court.

Defendants are ORDERED to show cause, **in writing to be filed no later than July 28, 2016**, why this action should not be dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated: July 21, 2016



SUSAN ILLSTON
United States District Judge